

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Eighteenth Region

CROSSCOUNTRY COURIER, INC.<sup>1</sup>

Employer  
and

TEAMSTERS LOCAL 749, affiliated with the  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS

Petitioner

Case 18-RC-16554

CROSSCOUNTRY COURIER, INC.

Employer  
and

TEAMSTERS LOCAL 116, affiliated with the  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS

Petitioner

Cases 18-RC-16557  
18-RC-16558  
18-RC-16559  
18-RC-16560

**DECISION AND DIRECTION OF ELECTIONS**

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, an Order Consolidating Cases and Notice of Hearing issued, and a hearing was held in these consolidated cases before a hearing officer of the National Labor Relations Board.

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>2</sup>
3. The labor organizations involved claim to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. Petitioner in Case 18-RC-16554 seeks an election in a unit consisting of all full-time line haul/road drivers, full-time warehouse/dockmen, and all full-time pick-up and delivery drivers employed by the Employer at its Sioux Falls, South Dakota facility; excluding office and clerical employees, administrators, mechanics, guards and supervisors as defined in the Act, as amended, and all other employees. Petitioner in Cases 18-RC-16557, 18-RC-16558, 18-RC-16559, and 18-RC-16560 seeks four separate units at the Employer's Fargo (North Dakota), Jamestown (North Dakota),

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<sup>2</sup> The Employer, CrossCountry Courier, Inc., is a North Dakota corporation with an office and place of business in Bismarck, North Dakota. The Employer is engaged in the overnight and expedited transportation of general commodities. During the calendar year 1998, a representative period, the Employer, which had gross revenues in excess of \$1,000,000, made sales valued in excess of \$50,000 to customers located outside the State of North Dakota, and purchased and received goods and services valued in excess of \$50,000 directly from points located outside the State of North Dakota.

Grand Forks (North Dakota), and Aberdeen (South Dakota) facilities. Each unit sought would include all full-time warehouse, full-time line haul drivers, and full-time delivery drivers employed by the Employer at each facility, excluding management, supervisors as defined in the Act, as amended, part-time warehouse and drivers (special drivers). The Employer does not raise any objections to the unit descriptions, but does contend that the only appropriate unit is system-wide—that is, a unit of drivers and warehouse employees employed by the Employer at all 12 of its terminals.

The Employer is engaged in the pick-up and delivery business. It picks up envelopes, packages and/or products weighing up to 5,000 pounds from customers and delivers those envelopes, packages and/or products to their points of destination. The Employer, which has its corporate offices in Bismarck, North Dakota, employs 275 to 300 employees corporate-wide. The Employer has a total of 12 terminals. It is at the 12 terminals that the Employer employs warehousemen and truck drivers. At its Fargo terminal the Employer employs about 39 drivers/warehousemen (also known as freight handlers); at its Sioux Falls terminal the Employer employs 16 similarly classified employees; while the numbers of similar employees at Jamestown, Grand Forks and Aberdeen are seven, six and three, respectively. In addition to the terminals specified in the five petitions, the Employer has terminals in Minneapolis, Minnesota (also called the Eagan facility); Watertown, South Dakota; Alexandria, Minnesota; and Bismarck, Minot, Dickinson and Williston, all located in the State of North Dakota. The Bismarck terminal is in the same building as the Employer's corporate offices. Each terminal is about 100 miles from the next nearest terminal. The two Employer terminals that are

the greatest distance from one another are Eagan, Minnesota, and Williston, North Dakota, and they are 650 to 700 miles from one another.

The Employer employs two categories of drivers. Line haul drivers transfer freight from one of the Employer's terminals to another of the Employer's terminals. None of the line haul drivers is part-time. There are four line haul drivers employed out of the Fargo, North Dakota facility; four out of the Bismarck, North Dakota facility; seven out of the Minneapolis, Minnesota facility; two out of the Sioux Falls, South Dakota facility; and one each out of the Grand Forks, North Dakota and Aberdeen, South Dakota facilities. In addition, the Employer employs a total of 80 to 100 route drivers. None is part-time. Route drivers make local deliveries from a particular terminal and pick up freight at customers' to return to the terminal. Route drivers also assist with loading and unloading trucks. Finally, the Employer also employs 12 to 15 full-time and 35 to 40 part-time freight handlers (warehousemen), who load and unload trucks and more freight as needed.

According to the Employer, there is a high degree of functional integration among its terminals. This integration is because freight often passes through and is handled by more than just the terminal employees who pick up and the terminal employees who deliver. Rather, some picked-up materials will be transported by a line haul driver to a different terminal, where the materials will be re-sorted and placed in yet another line haul truck for delivery to the terminal of destination. The clearest example of this is the Fargo terminal, which appears to be a "hub" for line haul carriers. Between the hours of 11:00 p.m. and 2:00 a.m. each night, line haul carriers from a variety of terminals will arrive at the Fargo terminal. All material transported by the line haul carriers destined,

for example, to Sioux Falls, South Dakota is placed on one truck driven by a line haul driver, and then transported to Sioux Falls. The same sorting and transporting is completed for other terminals. Employees at terminals other than Fargo may also be engaged in re-sorting and loading of freight, but Fargo appears to be the main hub. In fact, according to the Employer's brief, of ten line haul routes that the Employer has, seven involve the Fargo terminal as the originating and/or destination terminal. Only three routes (Minneapolis to Watertown, Minneapolis to Sioux Falls, and Aberdeen to Jamestown) do not involve the Fargo terminal. When freight reaches its destination terminal, it is then loaded onto the truck of a route driver, who is responsible for actual delivery. Route drivers deliver both to points located within the city where the terminal is located, as well as to surrounding towns. If a line haul driver is late, he might miss a line haul truck scheduled to leave for the next terminal. The Employer then sends a truck and driver to take the freight to the next terminal in the hope of making the transfer. However, if the transfer is not made, then a driver is sent with the load directly to the customer.

The result of this method of shipment is that line haul drivers from various terminals regularly meet in Fargo and interact not only with one another, but also with the freight handlers employed in Fargo, as the freight handlers unload the line haulers' trucks, sort the freight, direct freight destined for Fargo to the trucks of route drivers working out of the Fargo terminal, and reload the line haulers' trucks with freight destined for terminals served by individual line haulers. In addition, a Grand Forks line hauler leaves daily for Fargo and, once unloaded, takes a Fargo route truck and delivers in the town of Fargo. At the end of the day this line hauler takes freight back to

Fargo. This same scenario happens in reverse with one Fargo line hauler who goes to and from Grand Forks each day. The Employer contends that this happens at quite a few terminals every day, but provided no examples.

Except as noted above, it appears that there is no regular work-related contact among freight handlers and/or route drivers from one terminal with freight handlers and/or route drivers from another terminal. For example, the operations manager for the Fargo terminal, until he left in August 1999, testified that while he had regular contact with line haul drivers from other terminals, he did not have such contact with other employees from other terminals. On occasion, employees from one terminal will permanently transfer to another terminal. However, in order to do so, the employee must apply for the vacant position, the application is reviewed and considered by both the terminal manager and human resources, and the employee—if granted the transfer—serves a new probationary period and receives a probationary performance review. The transferred employee does retain his/her company seniority. The Employer will also temporarily transfer employees from one terminal to another, depending on manpower needs. The Employer estimates that temporary transfers occur three to four times a month on average, for periods of time ranging from a few days to two or three weeks. The record is unclear, however, regarding the number of employees involved in any single temporary transfer. It appears that most temporary transfers are between terminals within 100 miles of one another and that employees in Minneapolis, for example, do not help out at terminals in North or South Dakota. In fact, except for when the Employer is starting up a new terminal and transfers in a group of employees to aid with the start-up, and during the 1997 UPS strike, the record contains

little specific evidence regarding which terminals use temporary transfers on a regular basis. Rather, the Employer's evidence is conclusionary, merely claiming that temporary transfers "can be" to any terminals. Requests for temporary assistance are initiated by terminal managers, who may first contact other terminal managers, but who ultimately contact Bismarck corporate headquarters for approval/assistance. Finally, routes have been reassigned from one terminal to another. The Employer will move a route to a different terminal if delivery times can be improved as a result.

Each terminal has a manager, who reports to the Bismarck corporate headquarters. Petitioners and the Employer agree that among the managers' duties are making sure freight is timely moved and accurately loaded/transferred onto trucks, and scheduling employees' work. In addition, terminal managers complete and transmit to corporate headquarters numerous forms, including requisition forms for office supplies, misrouted freight reports, and accident reports. Thus, all delivery times and misroutes, as well as payroll and expenses, are monitored for each terminal. Terminal managers also grant employees time off, grant and schedule vacations, and determine whether overtime is necessary. Terminal managers conduct all employee performance reviews, including 90-day reviews at the end of probationary periods and annual reviews.

Depending on the contents of the 90-day review, employees may or may not receive wage increases. The parties also agree that terminal managers interview applicants for positions at their terminals. Once terminal managers select whom they wish to hire, they contact the human resources manager in Bismarck. She conducts motor vehicle checks to make sure their driving records are clear, checks the applicants' employment records if they were previously employed by the Employer, and schedules drug and

alcohol screenings. She also “might” conduct reference checks, but it is unclear under what circumstances. Finally, if the terminal managers recommend hiring applicants at wage rates outside the pay ranges set forth by corporate policy, the human resources manager reviews and can reject the recommendation. Otherwise, the terminal managers decide what to pay new employees, as long as within recommended corporate wage bands. The terminal managers then convey the job offers to the applicants. It is unclear when and if terminal managers can decide to seek applicants. While terminal managers must get permission from human resources to add an employee not contemplated by the budget, the record is contradictory whether terminal managers can go ahead and fill a vacancy within the budget without clearing the matter with human resources.

Discipline and termination decisions are also made by the terminal managers, although most are made in consultation with the human resources manager. It is the terminal manager’s responsibility to follow through, including signing and conveying discipline to employees and, of course, monitoring employee work performance and deciding when discipline might be warranted and therefore to contact human resources. Similarly, terminal managers, who have authority to handle employee grievances, generally contact the human resources manager at least with regard to more serious issues.

The Employer’s corporate office sets wage bands for employees employed at the terminals, determines benefits to be offered, decides billing rates and loading procedures, develops all forms as well as training and safety standards, distributes an employee handbook, issues all payroll checks, decides all wage increase amounts, and



maintains all personnel files. Therefore, benefits and the employee handbook are the same for all terminals. Wages, however, are not and are determined by the labor markets where terminals are located. All drivers wear the same uniform; all trucks have the same company logo; and all terminal employees receive the same employee newsletter, Christmas gift booklets and employee awards. The corporate office also employs a trainer, who travels to terminals. It appears that he trains terminal managers and has some role in training drivers and freight handlers, but it is also clear that terminal managers train employees.

On the basis of the foregoing and the record as a whole, I conclude that single-facility units consisting of employees employed at the Employer's Sioux Falls, South Dakota; Aberdeen, South Dakota; Fargo, North Dakota; Grand Forks, North Dakota; and Jamestown, North Dakota, are appropriate for purposes of collective bargaining. In reaching this conclusion, I have taken into account the facts that labor relations policy is centralized in Bismarck and that the skills and functions of the Employer's drivers and warehousemen are the same at all terminals. However, in finding single-facility units appropriate, I rely particularly on the presumption that single-facility units are appropriate,<sup>3</sup> and that the terminals are geographically separated from one another by 100 miles (the two farthest being 650 to 700 miles apart).<sup>4</sup> While the Employer contends that daily control of operations of each terminal is centralized in Bismarck, I

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<sup>3</sup> Esco Corp., 298 NLRB 837, 839 (1990), and cases cited therein.

<sup>4</sup> The Employer contends that geographical distance is not an obstacle to finding a unit of all terminals and cites Hazard Express, Inc., 324 NLRB 989 (1997), and Capital Coors Co., 309 NLRB 322 (1992). However, in both cases, petitioners sought the broader multi-terminal units, and, therefore, as the Board noted, application of the single-facility presumption was inappropriate. Hazard Express, 324 NLRB at 989.

reject that contention. It is clear from the record that each terminal has a manager; that each manager is responsible for the day-to-day operations of each terminal; and that each terminal has its own budget and accountability for misroutes, accidents and less than timely deliveries. While managers appear to regularly consult with the human resources manager located in Bismarck, much of the consultation is to make sure that the managers' actions are consistent with corporate policy. Thus, the record is clear that terminal managers interview applicants, select applicants for hire, decide applicants' starting wages, and then contact human resources for final clearance. Similarly, the terminal managers monitor employee performance, conduct evaluations, and initiate disciplinary actions. In addition to the fact that each terminal has separate supervision, I also note the lack of regular and substantial interchange among employees at the various terminals. Permanent transfers are intermittent; voluntary only; and, in any event, the transferred employee is treated like a new employee when transferred, except for retention of seniority. Temporary transfers, while more common, are limited to situations when terminals have too much work for too few employees. Moreover, the record fails to make clear whether all terminals regularly utilize temporary transfers, or whether the practice is limited to unusual situations (start-ups, UPS strike) or to certain chronically understaffed terminals. While line haul drivers regularly meet and interact with one another and with Fargo warehousemen, that is a function of Fargo being a hub for the collecting, sorting and delivery of freight, and there is no record evidence of similar interaction at other terminals. On the contrary, the record is clear that route drivers and warehousemen have little or no contact with route drivers or warehousemen from other terminals. Finally, no other labor organization seeks to

represent the employees in the broader unit. In these circumstances, I conclude that the single-unit presumption has not been rebutted and that the petitioned-for single-facility units are appropriate. Courier Dispatch Group, 311 NLRB 728 (1993); Bowie Hall Trucking, 290 NLRB 41 (1988). In particular, I note that, in representation cases, the unit sought by petitioners must only be *an* appropriate unit—and not *the most* appropriate unit. The Lundy Packing Company, Inc., 314 NLRB 1042, 1043 (1994).

6. The following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:<sup>5</sup>

**Case 18-RC-16554:** All full-time and regular part-time line haul drivers, pick-up and delivery (route) drivers, and warehousemen employed by the Employer at its Sioux Falls, South Dakota terminal; excluding office clerical employees, mechanics, managers, guards and supervisors as defined in the Act, as amended.

**Case 18-RC-16557:** All full-time and regular part-time line haul drivers, pick-up and delivery (route) drivers, and warehousemen employed by the Employer at its Fargo, North Dakota terminal; excluding office clerical employees, mechanics, managers, guards and supervisors as defined in the Act, as amended.

**Case 18-RC-16558:** All full-time and regular part-time line haul drivers, pick-up and delivery (route) drivers, and warehousemen employed by the Employer at its Jamestown, North Dakota terminal; excluding office clerical employees, mechanics, managers, guards and supervisors as defined in the Act, as amended.

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<sup>5</sup> Petitioners, without explanation, seek to exclude part-time employees. The Employer, also without explanation, did not oppose the exclusion of part-time employees. Because part-time employees are generally included with full-time employees when the part-time employees perform unit work, and because the record contains no basis for excluding part-time employees, I shall include them in the units herein. Fleming Foods, 313 NLRB 948 (1994). In view of the lack of record evidence regarding hours worked by part-time employees, those part-time employees eligible to vote will be those who regularly average four or more hours of work per week for the last quarter prior to the eligibility date. Davison-Paxon Co., 185 NLRB 21 (1970).

**18-RC-16559:** All full-time and regular part-time line haul drivers, pick-up and delivery (route) drivers, and warehousemen employed by the Employer at its Grand Forks, North Dakota terminal; excluding office clerical employees, mechanics, managers, guards and supervisors as defined in the Act, as amended.

**18-RC-16560:** All full-time and regular part-time line haul drivers, pick-up and delivery (route) drivers, and warehousemen employed by the Employer at its Aberdeen, South Dakota terminal; excluding office clerical employees, mechanics, managers, guards and supervisors as defined in the Act, as amended.

### **DIRECTION OF ELECTIONS**<sup>6</sup>

Elections by secret ballot will be conducted by the undersigned among the employees in the units found appropriate at the times and places set forth in the Notices of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in

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<sup>6</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **November 16, 1999**.

an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>7</sup>

Those eligible in Case 18-RC-16554 shall vote whether or not they desire to be represented for collective-bargaining purposes by Teamsters Local 749, affiliated with the International Brotherhood of Teamsters.

Those eligible in Cases 18-RC-16557, 18-RC-16558, 18-RC-16559 and 18-RC-16560 shall vote whether or not they desire to be represented for collective-bargaining purposes by Teamsters Local 116, affiliated with the International Brotherhood of Teamsters.

Signed at Minneapolis, Minnesota, this 2nd day of November, 1999.

/s/ Ronald M. Sharp

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Ronald M. Sharp, Regional Director  
Eighteenth Region  
National Labor Relations Board

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<sup>7</sup> To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses for each unit that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list for each unit containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the lists available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, Suite 790, Towle Building, 330 Second Avenue South, Minneapolis, MN 55401-2221, on or before **November 9, 1999**. No extension of time to file these lists may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such lists. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.